

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:23-cv-118-GCM**

ELIJAH E. PACHECO,

)

Plaintiff,

)

vs.

)

FNU WHITLEY, et al.,

)

Defendants.

)

ORDER

THIS MATTER is before the Court on pro se Plaintiff's "Motion to Dismiss/ Remove Defendant" [Doc. 26], "Motion: Withdraw Motion/Redaction" [Doc. 30], and "Motion to Amend in the Interests of Justice" [Doc. 27].

The pro se incarcerated Plaintiff filed the instant action pursuant to 42 U.S.C. § 1983, addressing incidents that allegedly occurred while he was a pretrial detainee at the Wilkes County Jail.¹ The Amended Complaint passed initial review against Defendants Hamby, Shumate, and White on claims addressing the conditions of Plaintiff's confinement and the use of excessive force on September 1, 2023; the remaining claims were dismissed without prejudice. [Doc. 18]. The Defendants were apparently served² and, on March 11, 2024, defense counsel moved for an extension of time to answer or otherwise respond to the Amended Complaint. [Doc. 24]. The extension was granted until April 17, 2024. [Doc. 25].

¹ The Plaintiff's current address of record is at the North Carolina Central Prison.

² The executed summonses have not yet been docketed.

In the instant Motion to Dismiss, the Plaintiff seeks to dismiss Defendant White from this case “for efficiency of process to serve upon the remaining defendants.” [Doc. 26 at 1]. Defense counsel filed a Notice that the Defendants consent to Defendant White’s dismissal from this action. [Doc. 29]. The Plaintiff subsequently moved to withdraw the Motion to Dismiss, stating that he did not realize that Defendant White had been served. [Doc. 30]. Because it appears that the Motion to Dismiss was filed in error, the Plaintiff’s Motion seeking to withdraw it will be granted.

In the Motion to Amend, the Plaintiff seeks leave to add claims of deliberate indifference to a serious medical need against the Defendants and “other officials”³ with regards to the alleged failure to provide the Plaintiff with medical care following the alleged use of force. [Doc. 27 at 1]. Attached to the Motion is a document titled “XIV Amend. Complaint Addendum/Amendment,” which purports to be “complimentary to … all claims within the original Amended Complaint, annulling nothing therein!” [Doc. 27-1 at 1].

The Plaintiff was previously informed that supplementation and piecemeal amendment will not be allowed in this case. [See Doc. 12 at 2]. The instant Motion to Amend will be denied for the same reasons previously discussed.

IT IS, THEREFORE, ORDERED that:

1. The Plaintiff’s “Motion: Withdraw Motion/Redaction” [Doc. 30] is **GRANTED** and the “Motion to Dismiss/ Remove Defendant” [Doc. 26] is **DISMISSED**.
2. The Plaintiff’s “Motion to Amend in the Interests of Justice” [Doc. 27] is **DENIED**.

³ The Plaintiff names as Defendants in the Addendum’s caption: Roger Hamby, Christopher Shumate, Jonathan Patrick, Ian Grant, Samuel Hill, Captain Wyatt, Jonathan Call, Robert Anderson, Nurse Jane, and Dr. John Doe. [Doc. 27-1 at 1].

SO ORDERED.

Signed: April 1, 2024



Graham C. Mullen
United States District Judge

